
No. 20,480

IN THE
UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOHN N. NEWLAND, Trustee in Bankruptcy
for HUGHES HOMES, INC., a Montana Corporation
and HUGHES HOMES ACCEPTANCE CORPORATION,
an Idaho Corporation,

Appellant,

vs.

WINCEL T. EDGAR and HELEN E. EDGAR,
Husband and Wife,

Appellees.

APPELLANT'S PETITION FOR REHEARING

TO: The Honorable Circuit Judges, Barnes, Koelsch and Duniway
Constituting the Court in the original hearing in the
entitled cause

MAURICE F. HENNESSEY,
ARNOLD T. BEEBE,
Attorneys for Appellant
FURCHNER, ANDERSON & BEEBE of Counsel

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JUL 1 1950

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Appellant hereby petitions for rehearing upon the following
grounds:

1. The decision of this appellate court was dated June 8, 1966,
and concluded that the district court lacked jurisdiction of the subject
matter.

2. The decision is premised upon John N. Newland, Trustee of
Hughes Homes, Inc., a Montana Corporation, and Hughes Homes
Acceptance Corporation, an Idaho Corporation, being an ordinary
trustee in bankruptcy, as distinguished from a trustee in proceedings
under Chapter X of the National Bankruptcy Act, Act of June 22, 1938, 52 Stat.

LETTER OF THE UNIVERSITY OF CHICAGO

TO THE PRESIDENT OF THE UNITED STATES

AND TO THE SENATE OF THE UNITED STATES

THE UNIVERSITY OF CHICAGO, CHICAGO, ILL., JANUARY 1, 1945

SIR: I have the honor to acknowledge the receipt of your letter of December 15, 1944,

concerning the proposed establishment of a new department of the University of Chicago.

Very truly yours,
[Signature]

WILLIAM D. HALL, President of the University of Chicago

1100 East 58th Street, Chicago 37, Illinois

Enclosed for the President of the United States

are two copies of the report of the Committee on the Proposed Department of the University of Chicago.

Very truly yours,
[Signature]

WILLIAM D. HALL, President of the University of Chicago

1100 East 58th Street, Chicago 37, Illinois

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as amended 11 U.S.C. Sec. 501, et seq. (1958).

John N. Newland is such a Chapter X trustee (Anaconda Building Materials Co., et al., V. John N. Newland, Trustee of the Estate of Hughes Homes, Inc., et al., debtors, 9th Cir., 336 F2d 625; R. Tr. 14 in the case at bar).

3. The status of John N. Newland as such a Chapter X trustee and the law upon which is based the jurisdiction of federal courts to hear plenary suits brought by a reorganization trustee were not emphasized and presented to this court on appeal by the parties. Accordingly, there is submitted authority for which it is contended that the district court did have jurisdiction of the cause.

4. Section 2 of the Bankruptcy Act (11 U.S.C.A. Sec. 11) confers jurisdiction upon all reorganization courts to hear plenary suits brought by a Chapter X trustee. Section 23 of the Bankruptcy Act (11 U.S.C.A. Sec. 46) was expressly made inapplicable to Chapter X proceedings by Section 102 of Chapter X (11 U.S.C.A. Sec. 502), and resu in the holding of Williams v. Austrian, 67 S.Ct. 1443; 331 U.S. 642:

" . . . With the limitations of Sec. 23 suspended, Sec. 2 confers jurisdiction upon all reorganization Courts to hear plenary suits brought by a Chapter X trustee." (331 U.S. at 661)

The Supreme Court in Austrian stated:

" . . . the conclusion more in accord with the purposes of Chapter X and with the pivotal position in which the trustee was placed is that Congress intended by the

elimination of Sec. 23 to establish the jurisdiction of the federal courts to hear plenary suits brought by a reorganization trustee, even though diversity or other usual ground for federal jurisdiction is lacking." (331 U.S. at 657-8)

The elimination of Sec. 23 allows the extensive jurisdiction conferred by Sec. 2a(6) and (7) to operate untrammelled. Independent grounds of federal jurisdiction, such as diversity of citizenship and amount in controversy are not required. (See 6 Collier on Bankruptcy, 14th Ed., Sec. 3.18 (pp. 663-664); Magidson v. Duggan, 180 F.2d 473 (C.A. 8, 1950)

Under the holding of Austrian, the federal district court in Idaho is a reorganization court having the jurisdiction conferred by Sec. 2 (331 U.S. at 658).

WHEREFORE, it is petitioned that rehearing be granted, the decision dated June 8, 1966, be withdrawn, and the questions raised on appeal be determined under the jurisdiction of this court.

Respectfully submitted,

MAURICE F. HENNESSEY
Butte, Montana

ARNOLD T. BEEBE
Blackfoot, Idaho

Attorneys for Appellant

FURCHNER, ANDERSON & BEEBE
Blackfoot, Idaho
Of Counsel

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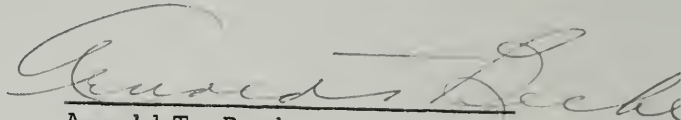
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I certify that in my judgment the foregoing Petition for Rehearing is well founded, and further certify that is is not interposed for delay.

A handwritten signature in cursive script, appearing to read "Arnold T. Beebe", written over a horizontal line.

Arnold T. Beebe
Of Counsel for Appellant

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